Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. ------ 71-916

HERBERT KAUFMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

HERBERT KAUFMAN,
In Proper Person,
1615 W. North Avenue,
Baltimore, Maryland 21217.

The Daily Record Co., Baltimore, Md. 21203

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To the Honorable Warren E. Burger, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

This is a petition by Herbert Kaufman for a writ of certiorari to review a decision of the United States Court of Appeals for the Fourth Circuit entered in the above case.

CITATION TO OPINION BELOW

The opinion of the Court of Appeals has not yet been published, but will be found in the Appendix at pp. 1a-2a.

JURISDICTION

The decision of the Court of Appeals was made on December 23, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Was the Petitioner improperly denied the right to counsel in the District Court?

2. Were the Petitioner's constitutional rights violated by the Court of Appeals' refusal to permit oral argument?

CONSTITUTIONAL PROVISIONS

The Fifth Amendment to the Constitution.

The Sixth Amendment to the Constitution.

STATEMENT OF THE CASE

On October 10, 1970, Petitioner was tried by a jury and convicted. The conviction was affirmed by the United States Court of Appeals on December 23, 1971, without affording the Petitioner the chance for oral argument.

The Petitioner was placed in the position of having his assets and sources of income seized by the United States with jurisdiction over those assets in one Court and with the Tax Court having jurisdiction over the Petitioner's proposed tax liabilities. The result of seizing the Petitioner's assets was that he was not technically a pauper and could not, on the other hand, afford to hire a lawyer of his own choice. It would, therefore, have proven of no value to file paupers petition merely to have the petition denied. The Respondent took away the Petitioner's ability to hire a lawyer by seizing his assets and, at the same time, Petitioner could not technically qualify as a pauper.

In regard to the Appellate proceedings, the Fourth Circuit should have given the Petitioner an opportunity to be heard on oral argument. The Petitioner was pro se in that Court and his brief may not have properly presented his views. The presentation of those views orally was a necessary prerequisite to permit the Petitioner to fully develop his positions.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The Petitioner was denied his right to counsel under the Sixth Amendment and his right to due process of law under the Fifth Amendment by the failure of the District Court to determine that the in forma pauperis proceeding was not adequate in the case of this Petitioner whose funds were seized by the United States and who was contesting a tax liability against the United States.

The Petitioner was denied due process of law by the failure of the Fourth Circuit Court of Appeals to permit him oral argument.

CONCLUSION

Wherefore, Herbert Kaufman, Petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals in the above entitled case.

HERBERT KAUFMAN,
Proper Person,
Petitioner.

APPENDIX

United States Court of Appeals
For The Fourth Circuit

No. 71-1461

United States of America,

Appellee,

v.

Herbert Kaufman,

Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge.

Decided December 23, 1971.

Before Butzner, Russell, and Field, Circuit Judges.

Herbert Kaufman pro se on brief; George Beall, United States Attorney for the District of Maryland, and Jeffrey S. White, Assistant United States Attorney, on brief for appellee.

Per Curiam:

Herbert Kaufman was tried by a jury and found guilty on seven counts of an eight-count indictment charging him with conspiracy to defraud the government, filing a false claim, perjury, and subornation of perjury. His principal assignments of error are that an attorney of his choice was not appointed to assist in his defense in the district court and that he was not mentally capable of defending himself in those proceedings.

There is no evidence in the record that Kaufman lacked sufficient funds to retain an attorney to represent him. He has not shown either by testimony or by way of an affidavit that he is without adequate resources to provide his own counsel. United States v. White, 344 F. 2d 92 (4th Cir. 1965). On appeal Kaufman was told that he could have counsel if he was indigent, but he refused to execute an affidavit of financial status to establish his indigency. He was not, therefore, entitled to court-appointed representation in the district court or on appeal.

Before sentencing, the district judge received psychiatric reports, but the privately retained doctors who prepared them did not testify. One of the reports expressed an opinion that Kaufman could not conduct his own defense. The district judge, however, previously had ample opportunity to observe Kaufman's ability to defend himself. We find no error in his refusal to give full credence to the doctor's opinion, which was formed after the trial.

We find no merit in Kaufman's other contentions.

The motion for a summary reversal is denied. We deem oral argument to be unnecessary and affirm the decision of the district court.

AFFIRMED.